



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1456  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,125	02/08/2002	Norihiro Tokita	2309/0K259	1463

7590 09/08/2003

DARBY & DARBY P.C.  
805 Third Avenue  
New York, NY 10022

EXAMINER

PIERCE, JEREMY R

ART UNIT	PAPER NUMBER
----------	--------------

1771

DATE MAILED: 09/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/071,125	<b>Applicant(s)</b> TOKITA ET AL.	
	<b>Examiner</b> Jeremy R. Pierce	<b>Art Unit</b> 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All   b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                             | 5) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 5-9, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Abuto et al. (U.S. Patent No. 5,964,743).

Abuto et al. disclose an absorbent material for personal care products having a topsheet, backsheet, and an absorbent core (column 5, lines 20-26). The topsheet may be made from an apertured or perforated film (column 5, lines 15-19). Such a topsheet may be completely hydrophobic (column 7, lines 1-2), and Abuto et al. disclose that hydrophobic material has a contact angle of greater than 90 degrees (column 2, lines 5-6). With regard to claim 2, the topsheet is next to the absorbent core (Figure 1). With regard to claim 5, the absorbent core may comprise natural or synthetic fibers (column 15, lines 14-40). With regard to claim 6, the absorbent material may be treated with anti-static treatment (column 14, lines 43-50). With regard to claim 7, the electrostatic chargeability of the topsheet and the absorbent layer would be lower than the topsheet alone because the antistatic agent is incorporated into the absorbent layer. With regard to claim 8, Abuto et al. disclose a surge layer may be used between the

Art Unit: 1771

absorbent layer and the topsheet (column 8, lines 45-47). The electrostatic chargeability of the surge layer would be lower than the topsheet, since the absorbent core contains antistatic material.

***Claim Rejections - 35 USC § 102/103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Terada (EP 320,314).

Terada discloses an absorptive sheet for food packaging comprising a water absorptive nonwoven sheet and a protective sheet (Abstract). Terada discloses the protective sheet may be a perforated film (column 3, lines 24-27). Terada disclose using hydrophobic polymers for the film, such as polyethylene and polypropylene (column 3, lines 15-16), and do not disclose adding surfactant. However, Terada does not teach the film to have a contact angle of at least 35 degrees. Although Terada does not explicitly teach the contact angle limitation, it is reasonable to presume that said limitation is inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. apertured film material made from hydrophobic polymers) and in the similar production steps (i.e. laminating the film to a fibrous absorbent material) used to

Art Unit: 1771

produce the food packaging sheet. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed contact angle would obviously have been provided by the process disclosed by Terada, since the reference teaches using apertures to provide a means to allow the liquid pass through the film and does not rely on any hydrophilic property. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. With regard to claim 4, the apertures may extend through to the nonwoven (Figure 1). With regard to claim 5, Terada discloses using synthetic fibers (column 2, lines 21-57).

***Claim Rejections - 35 USC § 103***

5. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Abuto et al.

Abuto et al. disclose that anti-static agents may be incorporated into the absorbent materials (column 14, lines 43-50). However, it is not clear whether the optional surge layer is considered as part of the "absorbent materials." Certainly, the surge layer works in conjunction with the absorbent layer, and to a large degree, performs a similar function in that it also holds liquid. Even if the surge layer were not classified as an absorbent material according to Abuto et al., it would still be obvious to a person having ordinary skill in the art to incorporate anti-static agent into it, in order to provide increased anti-static

Art Unit: 1771

properties to the fibrous materials of the absorbent article, since Abuto et al. already teaches applying such treatment to the absorbent fibers of the invention.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Abuto et al. in view of Arteman et al. (U.S. Patent No. 5,986,167).

Abuto et al. do not teach that the absorbent layer has through holes in communication with the topsheet. Arteman et al. teach that improved fluid intake can be achieved with absorbent material having apertures that extend down into the core (Abstract). It would have been obvious to one having ordinary skill in the art to have the apertures of Abuto et al. extend into the absorbent core material in order to increase fluid intake of the personal care garment, as taught by Arteman et al.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (703) 605-4243. The examiner can normally be reached on Monday-Thursday 7-4:30 and alternate Fridays 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

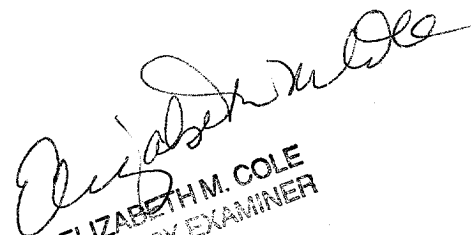
Art Unit: 1771

Any inquiry of a general nature or relating to the status of this application  
or proceeding should be directed to the receptionist whose telephone number is  
(703) 308-0661.



Jeremy R. Pierce  
Examiner  
Art Unit 1771

August 27, 2003



ELIZABETH M. COLE  
PRIMARY EXAMINER